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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Ms. Gail Brown  
Private Radio Bureau  
Federal Communications Commission  
Room 5002  
2025 M Street, N.W.  
Washington, DC 20554

ATTN: Ralph Haller, Chief - Private Radio Bureau  
Chair, PCS Task Force

**STATEMENT OF SOUTH DAKOTA NETWORK, INC.**

**GEN Docket No. 90-314**

Dear Ms. Brown:

South Dakota Network, Inc. ("SDN") and its 15 member rural telephone companies, by their attorneys, hereby submit this Statement concerning the April 11-12, 1994 Panel Discussion on Personal Communications Service (PCS) and the Commission's Second Report and Order, 8 FCC Rcd. 7700 (1993). This Statement is filed pursuant to the Commission's News Release, Mimeo No. 42480, released Apr. 4, 1994.

SDN and its rural telephone company members desire to provide PCS services in rural South Dakota. Due to their access to the existing SDN fiber-based centralized equal access network and tandem switch which would be used as the backbone for PCS services, SDN's member rural telephone companies are uniquely prepared to bring PCS to rural South Dakota. However, the Commission's cellular ownership restrictions for PCS licensees, and other PCS rules, could prohibit these rural telephone companies from providing PCS.

To support the provision of PCS by SDN and SDN member companies, SDN requests the following changes to the Commission's PCS rules. First, SDN requests the Commission to eliminate its cellular ownership restrictions, or, at a

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minimum, provide exemptions for rural telephone companies that qualify as designated entities under the Commission's rules for competitive bidding, and for centralized equal access providers. Second, SDN requests the Commission to revise the PCS spectrum allocation to include six blocks of 20 MHz each. Third, SDN requests the Commission to allow partitioning of PCS service areas by rural telephone companies seeking to serve their telephone exchange areas. Finally, SDN requests the Commission to increase the permissible power level for PCS operations in rural areas. As discussed below, these requests are consistent with the statements presented by parties at the April 11-12, 1994 Panel Discussion, and with comments filed in this docket.

### **I. The SDN Network**

SDN operates a centralized equal access system serving its 15 member telephone companies, as authorized by this Commission and by the Public Utilities Commission of the State of South Dakota. SDN serves 113 rural telephone exchanges (approximately 52,014 access lines) in both eastern and western South Dakota.

SDN's centralized equal access system is comprised of a fiber optic network connecting a tandem switch located in Sioux Falls, South Dakota with the 113 participating rural exchanges. The network already serves as the platform for the provision of many services in addition to equal access. These services include screening for wide area telephone service ("WATS") and WATS-type services; access to emergency medical services; access to law enforcement, fire and other emergency services via Enhanced 911 service; and Signalling System 7 services. In addition, the capacity of this fiber network would facilitate the delivery of a wide array of other services being discussed that require more bandwidth than traditional voice grade services, such as distance learning programs, telemedicine programs, and two-way interactive video transmissions for educational, medical and government use.

As noted by Dan Trampush of Ernst & Young for the Rural Coalition, the best way for PCS to be viable in rural, low population-density areas is to encourage rural telephone companies to maximize the "inter-workability" of PCS, cellular and telephone networks, so that economies of scope can be realized. Panel Discussion, Monday, April 11, 1994, Tr. at 44 [hereinafter Mon. Tr.]. SDN and its member telephone companies are ideally situated to realize these economies of scope, to the lasting benefit of rural communities.

**II. Rural Telephone Companies Should Not Be Subject  
To the Cellular Ownership Restrictions  
for PCS Licenses**

SDN agrees with panelists that the PCS auctions should proceed with all due speed.<sup>1</sup> However, in order to realize the Congressional mandate for rural participation in PCS,<sup>2</sup> SDN submits that the FCC must first modify its rules to facilitate, rather than prohibit, that participation.

**A. The Cellular Ownership Restrictions Will Preclude  
SDN's Members from Obtaining PCS Licenses**

Many rural telephone companies will be precluded, by the cellular ownership restrictions on PCS licenses, from providing PCS. This is because many rural telephone companies have minority interests in cellular licenses. However, these telephone companies cannot engage in the type of anticompetitive behavior which the cellular ownership restrictions are intended to prevent. For example, many rural telephone companies cannot exercise control over cellular systems in which they have a minority interest. Also, for many of these telephone companies, their own telephone service areas are not served by the cellular systems in which they have an interest. Furthermore, anticompetitive behavior would be difficult at best when up to seven PCS competitors will be licensed in a given Basic Trading Area (BTA).<sup>3</sup> In sum, with no threat of anticompetitive behavior, the cellular ownership restriction as applied to rural telephone companies has no benefit to rural subscribers, but serves only inhibit the provision of PCS to rural areas.

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<sup>1</sup> See, e.g., Testimony of Tom Stroup of the Personal Communications Industry Association (PCIA), Mon. Tr. at 20-25; Elliott Hamilton of US Wireless Consulting, Mon. Tr. at 123; Dave Twyber of Northern Telecom, Mon. Tr. at 126.

<sup>2</sup> See, e.g., 47 U.S.C. § 309(j)(4)(D) (requiring the Commission to ensure that rural telephone companies are given the opportunity to participate in the provision of spectrum-based services).

<sup>3</sup> SDN submits that Congress would not have designated rural telephone carriers as designated entities if it thought that their cellular interests could be used for anticompetitive purposes.

**B. Rural Telephone Companies May Be the Only Entities  
Who Will Provide PCS in Rural Areas**

Rural telephone companies may be the "PCS carriers of last resort." While other entities may seek licenses to provide PCS in rural areas, SDN submits that the only entities that will be willing to offer PCS with substantial penetration to both business and residential subscribers in those rural areas may be the rural telephone companies. In particular, SDN's member rural telephone companies include many cooperatives, owned by the residents of their service areas. These residents with their telephone companies and centralized equal access systems, may be the only entities who will ensure they obtain access to PCS services. However, the Commission's cellular ownership restrictions could preclude these rural subscribers from providing PCS to their communities. As stated by Mr. Trampush for the Rural Coalition, "restrictions on ownership of cellular and PCS would be bad for customers in rural areas." Mon. Tr. at 44.

Furthermore, if rural telephone companies are prohibited from providing PCS and if PCS fulfills predictions that it will compete with local exchange service, rural telephone companies could be forced out of business, or at least forced to sharply increase prices and curtail services. This result is inconsistent with the universal service goals of Congress and the FCC, and the Congressional mandate to encourage rural telephone participation in PCS.

**C. Changes to the PCS Rules Can Readily Be Made  
So that Auctioning May Begin**

While SDN agrees that the FCC should not unnecessarily delay PCS auctions, SDN also requests the Commission first to take the time to exempt rural telephone companies from the cellular ownership restriction. Given the full record in this proceeding, it should not be difficult for the Commission to revise its rules to recognize the importance of bringing PCS to rural areas, and the longstanding role of rural telephone companies as one of the only entities with a vested interest in bringing improved telecommunications to their rural service areas. The existing cellular ownership restrictions, at best, are unnecessary, and at worst, will prohibit the delivery of PCS to rural areas.

**D. Grant of an Exemption for Centralized Equal Access Providers, Such as SDN, Would Be Consistent with Other Commission Decisions Recognizing the Unique Benefits of Centralized Equal Access**

In addition to exempting rural telephone companies from the cellular ownership restriction on PCS licenses, the Commission should exempt the centralized equal access providers formed by these rural telephone companies. Such a grant of an exemption from the cellular ownership restriction for SDN and other centralized equal access providers is supported by FCC precedent, and with suggestions by Congress' Office of Technology Assessment ("OTA") and the Aspen Institute that regulators support and foster rural networks.

For example, the Commission recognized the benefits of centralized equal access networks to rural subscribers as it granted the initial Section 214 authority for those networks. In granting Section 214 authority to SDN, the Commission stated that the SDN network "has the potential for implementing in rural areas . . . the important Commission goal of making available more competitive, varied, high quality interstate services." Memorandum Opinion, Order and Certificate (SDCEA, Inc.), 5 FCC Rcd. 6978, 6981 (Dom. Fac. Div. 1990).<sup>4</sup> Later, as SDN and other centralized equal access providers desired to coordinate equal access balloting for their entire systems, the Commission granted waivers of the equal access balloting

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<sup>4</sup> See also Memorandum Opinion, Order and Certificate (MIEAC), File No. W-P-C-6400, released Aug. 22, 1990 (advantages to sparsely populated communities by the availability of interexchange carrier (IXC) competition fostered by centralized equal access); Memorandum Opinion, Order and Certificate (Iowa Network Access Division), 3 FCC Rcd. 1468, 1468 (Com. Car. Bur. 1988) (Commission priority to speed the availability of high quality, varied competitive services to small towns and rural areas), recon. denied, 4 FCC Rcd. 2201 (Com. Car. Bur. 1989); Memorandum Opinion, Order and Certificate (Indiana Switch Access Division), File No. W-P-C-5671, Mimeo No. 3652, released Apr. 10, 1986 (implementing equal access to subscribers who otherwise might be denied the benefits of IXC competition), review denied, 1 FCC Rcd. 634 (1986); Memorandum Opinion, Order and Certificate (Contel of Indiana), 3 FCC Rcd. 4298, 4301 (Com. Car. Bur. 1988) (equal access to be brought about sooner and less expensively, aggregation of access lines will be more attractive to competitive IXCs, and plan will reduce costs to IXCs).

deadlines.<sup>5</sup> More recently, the Commission exempted centralized equal access providers, and local exchange carriers participating in such arrangements, from requirements to provide direct-trunked transport in recognition of their unique network configurations.<sup>6</sup>

While SDN's focus has been on the provision of wireline services to its member companies' rural subscribers, SDN desires also to deliver radio-based PCS services to rural South Dakota. However, to do so, SDN needs federal regulatory policies that would support, rather than prohibit, its entry to PCS. As stated by OTA, "[i]f rural areas are to access advanced communications technologies in an economical fashion, it is critical that policymakers at the . . . Federal level[] think about and plan for such arrangements." Office of Technology Assessment, Rural America at the Crossroads: Networking for the Future 130 (1991). The Aspen Institute similarly encourages policymakers to consider "the larger economic and social context in which modern telecommunications operates, and explore new regulatory approaches that can unleash new applications and benefits that will contribute to economic development." Edwin B. Parker & Heather E. Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications 80 (1992) (prepared for the Aspen Institute).

### **III. Other PCS Rules Should Be Changed to Support the Provision of PCS in Rural Areas**

In addition to exempting rural telephone companies and centralized equal access providers from the cellular ownership restrictions, other PCS rules should be changed in order to support the provision of PCS to rural areas.

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<sup>5</sup> Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 7 FCC Rcd. 2364 (Com. Car. Bur. 1992) (SDN); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 6 FCC Rcd. 4789 (Com. Car. Bur. 1991) (MEANS); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 4 FCC Rcd. 3949 (Com. Car. Bur. 1989) (INS).

<sup>6</sup> Report and Order and Further Notice of Proposed Rulemaking (Transport Rate Structure and Pricing), 7 FCC Rcd. 7006, 7049 (1992), modified, 8 FCC Rcd. 5370, 5387 (1993); 47 C.F.R. § 69.112(f).

**A. The PCS Spectrum Allocation Should Be Changed  
To Include Six 20 MHz Blocks**

For example, the spectrum allocation for PCS should be changed to include six 20 MHz blocks, with two of the 20 MHz blocks being set aside for designated entities.

SDN submits that the 10 MHz PCS spectrum blocks will be the only blocks for which rural telephone companies have a realistic chance of obtaining a license through the competitive bidding process. Because the 30 MHz Major Trading Area ("MTA") licenses will be obtainable only by the largest bidders, other potentially large bidders will concentrate on the 20 MHz C block in each BTA. Thus, the only choice, if any, left for rural telephone companies will be the 10 MHz blocks.

SDN agrees with panelists who question the usefulness of a 10 MHz block. SDN further fears that due to the need to relocate incumbent microwave licensees, there will be substantially greater start-up costs, and delayed implementation.

SDN supports those panelists who urge the Commission to replace the current spectrum allocation with an allocation of six 20 MHz blocks. See, e.g., Jerry Hausman of MIT, Mon. Tr. at 135, 160. With such allocation, bidding at the BTA level would be diffused among those blocks, giving rural carriers and other designated entities a meaningful chance at participating (in accordance with Congress' intent).

SDN further requests that two 20 MHz blocks be reserved for rural telephone companies and other designated entities.<sup>7</sup> This spectrum set-aside is consistent with the Commission's recent decision that spectrum set-asides may be needed to ensure that designated entities are given the opportunity to participate in PCS and other spectrum-based services. See Second Report and Order (Implementation of Section 309(j) of the Communications Act - Competitive Bidding), PP Docket No. 93-253, FCC 94-61, para. 247, released April 20, 1994; 47 C.F.R. § 1.2110(c). SDN therefore disagrees with panelist Jerry Hausman, who argues against a set-aside for designated entities. Mon. Tr. at 209.

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<sup>7</sup> SDN agrees with other commenters that, if the Commission sticks with its current frequency allocation scheme, it should at the very least set aside 30 MHz of spectrum for the designated entities. At least 20 MHz of this spectrum should be in the lower frequency band.

**B. Partitioning of BTAs and MTAs Should Be Permitted  
To Allow Rural Telephone Companies to Provide  
Service Within Those BTAs and MTAs**

In addition to modifying the spectrum allocation, the Commission should revise its PCS rules to permit the partitioning of the corresponding service areas.

The Commission's PCS coverage requirements, as they now stand, could result in PCS BTA licensees being in full compliance with FCC Rules while not providing any service to the rural areas in the BTA. This result could occur in BTAs where the 90 percent coverage requirement can be achieved by providing service to the largest cities or towns, while leaving all or most rural areas unserved. Yet while the rural areas remain unserved, the FCC's Rules would prohibit a rural telephone company from obtaining a license to serve the rural area in that BTA, because the BTA licensee would have exclusive rights to the entire BTA. Thus, the PCS coverage requirements could act to prohibit the provision of PCS in rural areas.

SDN suggests that the solution is to allow PCS service areas to be partitioned. Then, for instance, in the example above, the rural telephone company could obtain a PCS license for the rural area within a BTA otherwise licensed to another entity. As Mr. Trampush for the Rural Coalition observes, partitioning would speed deployment of enhanced services to outlying areas. Mon. Tr. at 92.

SDN further suggests that the licenses for rural telephone companies and licenses for the overall BTAs or MTAs should be separate so that if the BTA or MTA licensee goes out of business, the rural PCS service would not be jeopardized.

SDN submits that the Commission should encourage voluntary partitioning, letting marketplace participants work out the partitioning arrangements, but perhaps giving incentives to BTA or MTA PCS licensees who allow rural telephone companies within the BTA or MTA to build out the PCS system to their rural telephone company service areas. However, where the overall BTA or MTA PCS licensee does not cooperate with rural telephone companies, mandatory partitioning should be required.

**C. The Power Limit for PCS Transmitters  
Should Be Raised for Rural Areas**

In order to ensure the economic viability of providing service to rural areas, the power limit for PCS transmitters in those areas should be raised.



SDN submits that the existing power limits may be uneconomical in rural areas. The combination of the low power limits and the low population densities in rural areas would require hundreds of microcells to be constructed to meet the 90 percent coverage requirement. SDN agrees with Mr. Trampush for the Rural Coalition and numerous commentors in this docket, that the power limit for PCS transmitters must be increased in rural areas, preferably to the equivalent of 1000 watts effective radiated power (ERP). E.g., Mon. Tr. at 42. The higher power level will increase the economic viability of providing PCS in sparsely populated rural areas.


#### CONCLUSION

In sum, SDN requests the FCC to support the provision of PCS to rural South Dakota by exempting rural telephone companies, and SDN and other centralized equal access providers, from the cellular ownership restrictions for PCS licenses. SDN also supports the other rule changes described above.

Respectfully submitted,

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By

  
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CERTIFICATE OF SERVICE

I, Susan J. Bahr, hereby certify that I am an associate at Blooston, Mordkofsky, Jackson & Dickens and that on this 22nd day of April, 1994, I caused to be hand-delivered a copy of the foregoing "STATEMENT OF SOUTH DAKOTA NETWORK, INC." to the following:

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Chairman Reed Hundt  
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Susan J. Bahr